

REMARKS

Claims 1-23, 36-40, 52-53 and 55-57 are canceled. Claims 24, 26-28, 30 and 49 are currently amended. Claims 25, 29, 31-35, 41-48, 50-51 and 54 are as originally submitted. Claim 26 and 49 are amended to improve the form of the claims and do not substantively affect the claims. Claims 24, 27, 28 and 30 are amended to delete the phrase "physiologically *functional derivative* thereof" with the phrase "physiologically *salt* thereof" as the phrase applies to each of GS-7340 and emtricitabine. This change has support in the specification, for example, on page 6, line 13.

No new matter is added.

Status of the Application

The Examiner made FINAL the restriction requirement and withdrew from consideration claims 1-23, 52-53 and 55-57. See Office Action, page 2. This amendment cancels the withdrawn claims. There are twenty-four claims pending – claims 24-35, 41-51 and 54.

Double Patenting

The Examiner asserted a provisional double patenting rejection of claims 24-51 and 54 over copending Application No. 10/540782. See Office Action, page 3. Applicants will address this ground for rejection as soon as allowable subject matter has been identified in the applications.

Claim Rejections – 35 USC 112

The Examiner rejected claims 24-35 under 35 USC 112, second paragraph for containing the term "physiologically functional derivative thereof". See Office Action, page 4. This amendment changes the objectionable phrase to "physiologically ~~functional~~

derivative salt thereof". A "salt" of GS-7340 or emtricitabine is definite and clear. In view of this amendment, applicant traverses and requests withdrawal of this ground for rejection.

Claim Rejections – 35 USC 103

The Examiner rejected claims 24-51 and 54 under 35 USC 103 as being obvious over Buelow et al. in view of Becker et al. See Office Action, pages 4-8. Applicant traverses this ground of rejection.

As the Examiner recognizes, Buelow et al. discloses emtricitabine, but fails to disclose GS-7340. Becker et al. discloses GS-7340, but does not teach the combination of GS-7340 and emtricitabine. However, the Examiner submits that it would be *prima facie* obvious to make such a combination since GS-7340 and emtricitabine, individually, are disclosed as anti-retroviral agents.

Applicant disagrees with the Examiner's rationale. There are many possible combinations of anti-retrovirals disclosed in the art, covering the same and different classes of compounds. If the Examiner's rationale is sound, then every possible combination would be obvious, which applicant submits cannot be the case. Applicant asserts that a *prima facie* case cannot be made here absent some specific rationale for combining specifically GS-7340 with specifically emtricitabine. Since the Examiner has only pointed to the general assertion that one would be motivated to combine anti-retrovirals, a *prima facie* case has not been made out here. Given all the possible combinations, it would not even be obvious to try the specific claimed combination with a reasonable expectation of success.

Furthermore, the inventive combination is chemically stable. See Specification at page 18. Claims 46-51 and 54 require chemical stability. Applicants request that the Examiner address these claims specifically in the next office action.

For the reasons above, withdrawal of this ground for rejection is requested.

In view of the above amendment and remarks, applicant submits that the pending application is in condition for allowance. Favorable consideration to that effect is earnestly solicited.

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Respectfully submitted,

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